

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

‘O’

Case No.	2:15-cv-04478-CAS-AS	Date	December 9, 2016
Title	TIM BEKINS, ET AL. v. DMITRY ZHELEZNYAK, ET AL.		

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) - DEFENDANT JEFF BECKER’S MOTION FOR LEAVE TO FILE COUNTERCLAIM AGAINST PLAINTIFF TAMI DONALD (Dkt. 73, filed November 7, 2016)

The Court finds this motion appropriate for decision without oral argument. See Fed. R. Civ. P. 78; C.D. Cal. Local Rule 7-15. Accordingly, the hearing date of December 12, 2016 is vacated, and the matter is hereby taken under submission.

On June 12, 2015, plaintiffs Tim Bekins, Tami Donald, and Reba Barber-Money, proceeding pro se, initiated this action against defendants Jeff Becker, Dmitry Zheleznyak, Kristina Bucic, and Pavel Ryabov. Dkt. 1. In brief, plaintiffs allege that they were California-based sales representatives of Akvinta USA, Inc. (“Akvinta”), a vodka corporation, but that they were not paid their salaries or reimbursed for their expenses from the end of 2013 through 2015. Plaintiffs also allege that defendants Zheleznyak and Becker are the alter egos of Akvinta.

On October 9, 2015, plaintiffs filed a first amended complaint (“FAC”) removing Pavel Ryabov as a defendant in this action. Dkt. 11. On November 2, 2015, the remaining defendants moved to dismiss this action on the grounds that, among other things, the FAC failed to name a necessary party—Akvinta. Dkt. 15. On January 11, 2016, the Court granted this motion without prejudice and provided plaintiffs with leave to file an amended complaint naming Akvinta as a defendant in this action. Dkt. 29.

On January 14, 2016, plaintiffs filed the operative Second Amended Complaint (“SAC”) against defendants Becker, Zheleznyak, and Akvinta (collectively, “defendants”). Dkt. 31. The SAC asserts claims for (1) breach of contract; (2) fraud;

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(3) deceit; (4) misrepresentation; (5) negligent misrepresentation; (6) breach of the covenant of good faith and fair dealing; (7) money had and received; (8) violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.; and (9) violation of the federal Fair Labor Standards Act (“FLSA”). Id.

On February 1, 2016, defendants filed a motion to dismiss and to strike the SAC. Dkt. 34. On February 29, 2016, plaintiffs filed an opposition, dkt. 38, and on March 7, 2016, defendants filed a reply, dkt. 42. On March 21, 2016, the Court granted in part and denied in part defendants’ motion to strike and motion to dismiss. Dkt. 44. Specifically, the Court granted without prejudice defendants’ motion to dismiss plaintiffs’ claims for breach of the implied covenant of good faith and fair dealing and for money had and received. Id. The Court granted with prejudice defendants’ motion to dismiss plaintiffs’ claim for violation of the FLSA. The Court denied defendants’ motion in all other respects. Id.

On May 4, 2016, Becker filed an amended answer to plaintiffs’ SAC. Dkt. 56 (“Becker’s Amended Answer”). In his answer, Becker asserts cross-claims against Zheleznyak and Akvinta. Id. at 18–23.

On November 7, Becker timely filed a motion for leave to file counterclaims against Donald.¹ Dkt. 73 (“Motion”). Donald filed her opposition on November 23, 2016, though it was due by November 21, 2016. Dkt. 76 (“Opp’n”). On November 28, 2016, Becker filed a reply in the nature of a notice of a non-opposition, dkt. 75, apparently because Becker had not yet received Donald’s opposition by mail. On December 9, 2016, Donald filed a withdrawal of her opposition to Becker’s motion. Dkt. 76.

Because Donald no longer opposes Becker’s motion, and keeping in mind the liberal amendment standard of Federal Rule of Civil Procedure 15, the Court **GRANTS** Becker’s motion for leave to file counterclaims against Donald. Becker’s Proposed

¹ The deadline to request leave to file amended pleadings is December 1, 2016, the factual discovery cut-off is July 18, 2017, and a court trial is scheduled to begin on December 5, 2017. See dkt. 72.

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Counterclaim, dkt. 73-1 Ex. A, is deemed filed and Becker is ordered to serve Donald forthwith.

IT IS SO ORDERED.

Initials of Preparer	00	:	00
	CMJ		